

REMARKS

Reconsideration and allowance of the claims are requested in view of the above the amendments and following remarks. Claims 1-3, and 5-36 are pending in the present application, with claims 1, 13 and 24 being independent.

Double Patenting

The Office Action has provisionally rejected claims 1-36 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims in co-pending US. Patent Applications No. 10/690,422, 10/849,090, and 10/994,010. Applicants intend to file a terminal disclaimer when the double patenting rejection becomes final and when the claims of the present application are allowed.

Rejections Under 35 U.S.C. §103

The Office Action rejects Claims 1-3, 5, 8-10, 13-16, 19-21, 24-27, 30-32, 35 and 36 under 35 U.S.C. § 103(a) as purportedly being unpatentable over U.S. Patent No. 7,346,700 to Gould et al. (hereinafter “*Gould*”) in view of U.S. Publication No. 20050015455 to Liu (hereinafter “*Liu*”) and in further view of US Patent No. 7,275,093 to *Freed* (hereinafter “*Freed*”). Applicant respectfully traverses the rejection.

With regards to Claim 1, for reasons stated below *Gould*, *Liu* and *Freed*, either singularly or in combination, do not disclose or suggest all of the elements of Claim 1 as a whole. Specifically, the applied references do not disclose or suggest, “*wherein each packet sniffer in the plurality of packet sniffers is configured to; a) check a fragment offset field of an IP header to ensure the IP header is the first fragment of a packet... c) disregarding the packet if the SYN bit has not been set,*” as recited in Claim 1.

Type of Response: Response to Final Office Action
Application Number: 10/728,023
Attorney Docket Number: 315549.01
Filing Date: December 3, 2003

The Office Action acknowledges that neither Gould nor Liu disclose *a) check a fragment offset field of an IP header to ensure the IP header is the first fragment of a packet... c) disregarding the packet if the SYN bit has not been set,*” as recited in Claim 1. See Office Action at page 6.

Instead the Office Action relies on Freed as support. However, Freed does not disclose the above stated limitations of Claim 1. Specifically, the TCP header disclosed by Freed discloses a fragment offset field which indicates “where in the data bundle this fragment belongs.” See Table 4. Instead of disclosing whether “the IP header is the first fragment of a packet” as required by Claim 1, the fragment offset field of Freed indicates where “in the data bundle this fragment belongs.” The Examiner cannot equate the fragment offset of Freed with the limitation of Claim 1 because Freed’s fragment offset where the **fragment belongs** as opposed to Claim 1 which requires that the fragment offset indicate “the IP header is the first fragment of a packet.” This is a significant difference in that Claim 1 is focused on the location of the IP header in the packet, i.e., the first position in the IP header. In contrast, Freed’s fragment offset indicates where a particular fragment is located in the header. Accordingly, Freed does not disclose or suggest a “*check a fragment offset field of an IP header to ensure the IP header is the first fragment of a packet.*”

Moreover, Freed is silent with to “*disregarding the packet if the SYN bit has not been set,*” as required by Claim 1. Freed discloses breaking apart the incoming IP packets to determine whether the SYN has been has been set. An inherency argument also fails because, Freed breaks up the incoming data into fragments to determine whether a SYN bit has been set for the purpose of determining the maximum segment size (MSS) of the data. This MSS value is then used to adjust the size of the data frame. See Freed at col. 11, lines 5-42. Accordingly, any discarded packets would adjust or skew the MSS value and therefore providing an improperly calculated frame size. Accordingly, Freed does not disclose or suggest, “*disregarding the packet if the SYN bit has not been set,*” as recited by Claim 1.

Accordingly, neither *Gould*, *Liu* nor *Freed*, separately or in combination teach or suggest, “*wherein each packet sniffer in the plurality of packet sniffers is configured to; a) check a fragment offset field of an IP header to ensure the IP header is the first fragment of a packet... c) disregarding the packet if the SYN bit has not been set,* ” as recited in independent Claim 1. Accordingly, Applicants request that the 35 USC 103(a) rejection of Claim 1 should be withdrawn.

With regards to independent Claims 13 and 24, the arguments presented above with regards to Claim 1, apply equally to Claim 13 and Claim 24. Accordingly, for at least the reasons stated above, neither *Gould*, *Liu* nor *Freed*, separately or in combination teach or suggest, when looking at Claim 13 and 24, as a whole, “*wherein each packet sniffer in the plurality of packet sniffers is configured to; a) check a fragment offset field of an IP header to ensure the IP header is the first fragment of a packet... c) disregarding the packet if the SYN bit has not been set,* ” as recited in independent Claim 13 and independent Claim 24.

Claims 2-3, 5 and 8-10 depend from independent Claim 1. Dependent Claims 2-3, 5 and 8-10 are likewise allowable for at least the same reasons as independent Claim 1, and are variously allowable for the same reasons. Claims 14-16 and 19-21 depend from independent Claim 13. Dependent Claims 14-16 and 19-21 are likewise allowable for at least the same reasons as independent Claim 13, and are variously allowable for the same reasons. Claims 25-27, 30-32 and 35-36 depend from independent Claim 24. Dependent Claims 25-27, 30-32 and 35-36 are likewise allowable for at least the same reasons as independent Claim 24.

The Office Action rejects Claims 6, 7, 17, 18, 33 and 34 as being rejected under 35 USC § 103(a) as being purportedly unpatentable over *Gould* and *Liu* in view of *Freed* in further of U.S. Patent No. 7,117,358 to Bandini (hereinafter “*Bandini*”). Applicants respectfully traverse the rejection.

With regards to Claims 6, 7, 17, 18, 33 and 34, *Bandini* fails to overcome the deficiencies of *Gould*, *Liu* or *Freed* as discussed above with regards to independent Claims 1, 13 and 24.

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Claims 6 and 7 depend from independent Claim 1 and are therefore allowable for at least that reason. Claims 17 and 18 depend from independent Claim 13 and are therefore allowable for at least that reason. Claims 33 and 34 depend from independent Claim 24 and are therefore allowable for at least reason. Applicant respectfully request that he 35 USC 103(a) rejection of Claims 6, 7, 17, 18, 33 and 34 be withdrawn.

The Office Action rejects Claims 11, 12, 22, 23, 28 and 29 as being rejected under 35 USC §103(a) as being purportedly unpatentable over *Gould* and *Liu* in view of *Freed* in further of U.S. Publication No. 20030109248 to Lewis (hereinafter "*Lewis*"). Applicants respectfully traverse the rejection.

Lewis fails to overcome the deficiencies of *Gould*, *Liu* or *Freed* as discussed above with regards to Claims 1, 13 and 24. Claims 11 and 12 depend from independent Claim 1 and are therefore allowable for at least that reason. Claim 22 and 23 depend from independent Claim 13 and are therefore allowable for at least that reason. Claims 28 and 29 depend from independent Claim 24 and are therefore allowable for at least reason. Applicant respectfully request that he 35 USC 103(a) rejection of Claims 11, 12, 22, 23, 28 and 29 be withdrawn.

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Conclusion

Accordingly, in view of the above amendments and remarks it is submitted that the claims are patentably distinct over the prior art cited and that all the rejections to the claims have been overcome. Based on the foregoing, Applicants respectfully request that the pending claims be allowed, and that a timely Notice of Allowance be issued in this case. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,
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Date: July 6, 2009

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/Rimma N. Oks/
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